

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1001 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHESH JELIYA CHHARA

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Mr.R.M.Chauhan, GOVERNMENT PLEADER for Respondent No.

1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 28/1/98 passed by the Police Commissioner, Ahmedabad City, under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article

of the Constitution of India challenging the legality and validity of the order of detention.

The detaining authority after considering the fact of registration two prohibition cases against the petitioner and, statements of two witnesses for the alleged incident dated 11/1/98 and 3/1/98 recorded a satisfaction that the petitioner is a bootlegger within the meaning and section 2(d) of the act and therefore with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention is necessary. As far as two unregistered cases are concerned, it is alleged by the concerned witnesses that they were beaten when they refused to keep quantity of liquor in his house, or that the concerned witness was beaten on the suspicion that he is an informant of the police. On both the occasions, many people gathered to watch the incident. However, as the petitioner rushed towards them, they started running helter and skelter and the atmosphere of fear and terror created.

Since this petition is required to be allowed on the first contention that the alleged activities of the petitioner, even if they are assuming to be true, the same can not be termed as a breach of public order.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witness are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 28/1/98 is quashed and set aside. The detenu Mahesh Jeliya Chhara is ordered to be released forthwith if not required in connection with any

other offence. rule is made absolute accordingly with no
order as to costs.
